

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLAUDIO AMAURIS NUNEZ-POLANCO,

Plaintiff,

-against-

SUPERINTENDENT MICHAEL CAPRA, et
al.,

Defendants.

22-CV-4475 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is incarcerated in Great Meadow Correctional Facility, filed this action *pro se* and *in forma pauperis* (IFP). On February 27, 2023, after granting Plaintiff leave to file an amended complaint, the Court dismissed the action, under 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim upon which relief may be granted. On March 1, 2023, the Court received a motion from Plaintiff, which is dated February 27, 2023, requesting appointment of counsel.¹ (ECF 22.) Because this matter was dismissed and is closed, the Court denies the motion for counsel as moot. (ECF 22.)

¹ Under the prison mailbox rule, a prisoner's document is deemed filed on the date that he gives it to prison officials for mailing. *Noble v. Kelly*, 246 F.3d 93, 97-98 (2d Cir. 2001). "[I]n the absence of contrary evidence, district courts in this circuit have tended to assume that prisoners' papers were given to prison officials on the date of their signing." *Hardy v. Conway*, 162 F. App'x 61, 62 (2d Cir. 2006). Plaintiff in all likelihood filed the motion for counsel before receiving the order of dismissal in the mail.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: March 16, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge